

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F104155**

**ROBBIN VANNOCKER, EMPLOYEE**

**CLAIMANT**

**PACE INDUSTRIES, EMPLOYER**

**RESPONDENT**

**SEDGWICK CLAIMS MANAGEMENT  
SERVICES, CARRIER**

**RESPONDENT**

**OPINION FILED MARCH 16, 2004**

A hearing was held on October 2, 2003, in Harrison, Arkansas, and a second hearing was held on December 17, 2003, before ADMINISTRATIVE LAW JUDGE DON N. CURDIE, at Mountain Home, Arkansas.

The claimant was represented by the Honorable Frederick Spencer, Attorney at Law, Mountain Home, Arkansas.

The respondent was represented by the Honorable Jim Sprott, Attorney at Law, Harrison, Arkansas.

**STATEMENT OF THE CASE**

The initial hearing was held in this case on October 2, 2003, in Harrison, Arkansas. Subsequent to that hearing date, the court reporter notified the parties that a significant portion of the testimony transcribed had been inadvertently erased.

By agreement, the parties held an additional hearing on December 17, 2003, in Mountain Home, Arkansas.

It was stipulated as follows:

1. The employee-employer-carrier relationship existed at all relevant times.
2. The claimant's average weekly wage was \$407.53.

3. The claimant sustained a compensable injury to her forehead on February 27, 2001, which was treated as medical only.

The issues to be litigated at the hearing were as follows:

1. Did claimant sustain a compensable organic brain injury? (or did claimant sustain an injury pursuant to A.C.A. 11-9-113?)
2. Is claimant entitled to temporary total disability from March 5, 2001, (T-60), to January 25, 2002?
3. Is claimant entitled to compensation for disfigurement?
4. Is claimant permanently and totally disabled?
5. In lieu of permanent and total disability, is claimant entitled to wage-loss disability?
6. Is claimant entitled to an attorney's fee?
7. Is claimant entitled to reasonable and necessary medical treatment, including unpaid medical bills?

The claimant, 38 years of age, has seven children and is, at the present time, separated from her husband. She finished the eighth grade and obtained a GED. The claimant lives with five of her children, who range from ages 5 through 18.

Prior to working for respondent, Pace Industries, the claimant worked as a waitress and home health care employee. With Pace Industries, the claimant assisted in the manufacture of barbecue grills, street light housing, and washing machine parts. (T-65). The claimant testified regarding her specific job on or about February 27, 2001:

“Q. And what does a break-off person do?”

A. Um, they break off the extra stuff on the parts when they come out and you have trim, a trim machine. It trims and pokes the holes, the big

holes.....

Q. So sometimes you might use a drill?

A. Yeah, and sometimes you file, sometimes you have a hand punch.

Q. What are you making in the break-off?

A. Many things.

Q. What types of things?

A. Lawn mower decks, like city street lights, the metal things over it, they make those, I was told we make car parts. Some of the things I didn't know what it was. I wasn't sure what they were.

Q. Ever make grills?

A. Yes, grills.

Q. Charcoal grills?

A. Yes.”  
(T-30, 31)

The claimant testified that she does not independently remember how her accident occurred, or what happened immediately thereafter, and she admitted that she did not subpoena any witnesses who might have witnessed the accident or were first on the scene when she was injured (T-7). After her injuries, the claimant testified that she had a reaction based on what she was told happened to her face and head. She testified that her first independent recollection was going to see Dr. Lesley in Harrison, Arkansas. The claimant identified unpaid medical bills of over \$1000.00, and introduced a photograph of the injury to her head as Claimant's Exhibit #2. The claimant testified that she immediately began having headaches and vomiting. She took Celebrex, Codiene, Ultram, and those medications produced side effects. She had difficulty sleeping. The claimant testifies that she has headaches every day, she cries often, and

her headaches often result in her failure to obtain any sleep. The claimant testified that she has not worked anywhere since on or about the date of her injury. She testified as follows:

“A. With the regular headaches, the daily ones, cause the pills will work on those, I sleep a lot, a whole lot, I try to get up for a few hours after the kids come home from school, cause I have children.

Q. Right.

A. And of course, they want their mom and so I try and spend a little bit of time with them.

Q. Sure.

A. I don't feel like it's quality time, cause I'm tired and I'm so down, and I can't think.

Q. Right.

A. So that's, with the pills, they ease up some of the regular headaches. The severe headaches, there's no doing anything. I don't do anything. I don't see how anyone could do anything if they had headaches like that. There's not, you can't move, you move and you want to scream, if you sit still, you want to scream, no matter what you do, nothing helps, nothing helps.”

(T-28, 29)

The claimant testified that her memory is bad, she is not able to read because she cannot absorb information that she reads. She testified that when she stands, sits, lays down or does just about any extensive moving, it causes pain. The claimant testified that she hires someone to do housecleaning and she is unable to do any recreational camping like she used to. Driving confuses her.

The claimant testified that she did try to find work, and even attempted to obtain a job as a home health care worker in Harrison, Arkansas. The home health care agency would not hire her. It is her opinion that no one will hire her.

On cross examination, the claimant testified that she drove an automobile part of the way to the hearing, which was held in Harrison, Arkansas. The claimant testified that she filed for unemployment in April, 2001(stating she was able to work.) Respondent's Exhibit #4 reflects that the claimant was discharged from Pace Industries on or about March 28, 2001. Respondent's Exhibit #4 (p. 129), apparently is a note signed by the claimant stating that she is "able to work now." The claimant testified that on January 28, 2001, she went to the emergency room with migraine headaches, nausea and vomiting.

Seth Butler testified. He is the claimant's son and was living in claimant's home when she was injured at work. He testified that he saw her after the injury and claimant complained of being nauseated and sick. Claimant was not able to remember what happened during her accident, according to her son He testified that the claimant acts different, comparing her actions prior to the March 5 accident. He testified as follows:

"A. Erratic, everything's different all the time, depending on how bad her headache is or, just mainly how bad her headache is. If it's real bad, she's down and out and the other days it's just, it's become normal anymore, but I mean it's not a normal person's behavior, she still always has a headache, sometimes it's just less than others.

Q. Have you seen her throw up with these headaches?

A. Yes, I have."  
(T-27)

Paulette Butler, the claimant's aunt, testified by deposition. She observed the claimant after she returned home from work on the 27<sup>th</sup>. She had a cut on her forehead and was having headaches. Claimant told her aunt that she was knocked unconscious. Ms. Butler testified that before the injury, claimant was a hard worker who

had a outgoing personality. She joked a lot with people and liked her job. Ms. Butler testified that claimant suffered from headaches continually and almost constant nausea. Claimant says things inappropriately and exhibits memory loss and problems driving. Claimant loses her balance often.

It was stipulated that if the claimant's mother, Sarah, testified that she would be consistent with the testimony of Seth Butler.

The respondent presented testimony at the hearing. Bobby Madison testified that he was the foreman on the third shift at Pace Industries from 11:00 p.m. to 7:00 a.m. on February 27, 2001. He has been employed with Pace Industries for 27 years. The claimant worked the aluminum die cast machine. It was described as being approximately 6 to 7 feet wide and 25 to 30 feet long. The claimant assisted in making aluminum die cast parts. Mr. Madison displayed the type of part the claimant was involved in producing. He testified as follows:

"Q. Now, Mr. Madison, I'm going to show you three items here and ask you, are these aluminum parts that might be made by one of these machines that you've described?

A. Yes, this is the outer, the scrap, what we disregard, knock off and throw away, but yes, this comes off one of the parts.

Q. And, is this little outer fringe, this little thick - - -

A. This right here.

Q. Is that what a break off person would knock off and hone down?

A. No, actually, this is where they knock it off. This is a vent to help the gas and stuff vent out.

Q. What does a break off person, we've heard about a break-off person, what do they do?

A. When the parts come out of the die cast machine, they'll be on the

table, they break off the outer, we put them in a press and they trim the outer edges of them and pack them and stack them.

Q. All right, now, I'm going to show you this one, is there a blister on this?

A. Yes.

Q. Where is the blister, point it out so the Judge can see it?

A. Right here.

Q. Is it within the circled blue?

A. Yes.

Q. And that little bump right there is what you call a blister?

A. Right.

MR. SPOTT: Your Honor, I'm going to let you take a look at a blister.

THE COURT: Okay.

Q. What is a blister, what is that thing that we've identified as a blister.

A. It's the gas, sometimes the gas gets trapped and it doesn't vent out and it pops through the skin, it's the, the blister is gas right under the skin of the casting.

Q. Okay, and sometimes it pops?

A. Right.

Q. Okay, now do you have here a couple of examples of blisters that have popped?

A. Yes, right here.

Q. Are they the two items that are circled in red?

A. Yes.

Q. All right, now, are these, what's the typical size of a blister?

A. These are above average.

Q. Those are larger than average?

A. Larger than average, we have had, you know, but this is average.

Q. Okay.

A. Above average.

MR. SPROTT: Your honor, these being examples of blisters that have popped.

Q. Now let me look at, I'll show this one, there's a piece of metal here, missing from this part and it's dimension I would say roughly is a half inch by a quarter of an inch, would you agree with that?

A. Um, hm.

Q. So, and how thick would you say that little piece of metal a half inch by a quarter of an inch, how thick would you say that is?

MR. SPENCER: Your honor, objection, this is total irrelevant, there's no indication that this is what was in fact, involved in the accident that they stipulated happened with Robbin Vannocker.

MR. SPROTT: I'll tie that in with other witnesses, he was not present at the accident.

THE COURT: All right, go ahead.

A. What was the question again, I'm sorry?

Q. Question is how deep or how thick was the piece of metal that came off of that blister?

A. That's probably fifty-thousandths.

Q. Fifty-thousandths of an inch?

A. Right.

Q. And you're saying that, that's an above average or slightly above average piece of metal that comes off a popped blister?

A. Yes."  
(T-49 thru 51)

Mr. Madison was told of the claimant's injury. One of the other employees contacted him on a radio and told him that one of the "blisters" had blown up and hit the claimant on the forehead. The lead man said he was going to write up the injury in his "band aid book" because it was a minor injury. According to Mr. Madison, the claimant finished out her nightly work on the same machine that she had worked on that day.

He testified that from the year 2000 until the time of the claimant's termination, the claimant was a below average employee who experienced excessive absenteeism.

Danny Nichols testified that he has worked 20 years at Pace Industry. On February 27 he remembers working on one of the die cast machines which was directly across the aisle from where the claimant was working. He testified that he turned to go around a corner and looked across the aisle. The claimant acted like she was hurt, so he walked over to see what was going on. Someone told him that she got hit with a popped blister. He immediately got on the radio and called her supervisor, who was Dempsey Gibbins. He saw "a little red spot there", but no blood. According to the witness, the claimant was never unconscious and she completed her work shift. He testified that there has never been an employee to lose work because of a popped blister on one of the items produced.

Mr. Dempsey Gibbins testified that he has worked for the respondent for 19 ½ years. He was the claimant's supervisor, and was acting as lead man on February 27. He testified as follows:

"Robbin was sitting on the platform, and I just walked up and asked her what it was, she was holding her head and best I can remember you know, when she mover her hand, she had, say a small cut, I'd say between a quarter and a half inch on her forehead and she had like a you know, you

could see where it hit and I asked what happened, she said she got hit in the head when she was pulling the casting out of the machine. And there I was, you know, a blister had popped.

Q. Did you see it?

A. Yes.

Q. Okay, about how big was it?

A. About the size of a quarter.

Q. About the size of a quarter, okay, and how far would this have been away from her?

A. Say eighteen inches.

Q. Okay, and go ahead and describe what you saw on her, you've told us, let me show you a photograph. Does it look like this photograph, which is claimant's exhibit two?

A. Well, yeah, it's, I didn't think the cut was that long, I thought it was more like you'd say, a quarter, it wasn't like a deep cut, you know, it was just like it had hit and just knocked the skin up, you know, it's - - -

Q. Was it bleeding?

A. She just had a small spot of blood on her forehead and I had her to go to the bathroom and cleaned it off. She stayed in the bathroom, I'd say, oh, ten of fifteen minutes, then she come back up and she finished her shift out.

Q. **She finished her shift out?**

A. **Yes.**

(T-75,)

.....

Q. That evening, did you think this was anything more than a band aid kind of a situation?

A. That's all I though it would be.

Q. Why did you think that?

A. Cause no she didn't have no big cut and I didn't think it would be no

injury at all.

Q. Did she act any differently after she went back to work, than she had before?

A. Oh, if I remember right, about an hour or so after that, she complained of a headache.

Q. Okay, but already testified, she finished her shift out?

A. Yes sir.

**Q. Was she ever unconscious, that you saw?**

**A. No.**

Q. Now, you were there within thirty seconds of the call?

MR. SPENCER: Objection, your honor, that was the testimony, oh you said of the call, excuse me, I withdraw my objection.

THE COURT: Okay.

Q. Am I right?

A. Yes sir.

Q. Mr. Nichols had called, he's already told us when he called and how long it was after he was there when he called you, you were there within thirty seconds of the call?

A. Yes sir.

Q. How long were you there with her?

A. I would say I was there with her for ten minutes, before she went to the bathroom.

Q. Okay, were you there until she went back to work on the machine?

A. She went to the bathroom, I didn't go with her to the bathroom.

Q. Right, but I mean, you observed, did you observe her back working at the machine?

A. Yes sir.

Q. At any time, during this period of time, was she unconscious?

A. No sir.

Q. Other than this spot of blood, did you see a lot of bleeding?

A. No sir.

Q. Did you ever see her knocked to the ground?

A. No sir.

Q. Did you ever see a bump on her head?

A. It was a small bump.”  
(T-77, 78)

\_\_\_\_\_ Jeannie Hessenflow testified that she was the Human Resource Assistant for Pace Industries in 2001. She testified that in March, 2001, (after the accident) the claimant telephoned her. She testified:

“She had just basically called and stated that she wanted to go see her own doctor, not the Pace’s company doctor, that she didn’t like the kind of care that he was giving her, and I told her that, that would be okay and that, that was her decision, and at that point I informed her that anything after this point would be on her own or not Pace’s responsibility as far as workman’s comp, because she wasn’t going to be seeing our company doctor anymore.”

(T-92)

According to Ms. Hessenflow, the claimant did not return to work.

Steve Flinn testified that he is personnel manager for the respondent, and

has worked in that position for 21 years. According to Mr. Flinn, the claimant quit working at Pace Industries on or about March 12, 2001. According to their records, the claimant returned to work immediately after the injury and worked for a short period of time.

Paulette Butler returned to the witness stand at the end of the hearing and testified that she saw the claimant approximately 5 ½ hours after the injury. When she saw the claimant's cut on her forehead, there was a little blood and there was a bandage on her head. The claimant was complaining of headaches and she was nauseated.

The medical records in this case, reflect that on January 5, 2001,(over a month before the injury) the claimant reported being dizzy and experiencing diarrhea and vomiting. She related this episode to food she had eaten at a restaurant. Claimant's Exhibit 1, page 2, reflects that the claimant told Dr. Reese that she had been hit in the head from a part off a machine where she was working. She complained of losing consciousness and headaches. (It is noted once again that claimant does not remember what happened when she was injured. There is no direct evidence of unconsciousness or the extent of claimant's condition at the time of the injury. None of the testimony of the claimant regarding her condition that was summarized to her by other people is taken as direct evidence, but only considered as a basis for her reaction to what people told her had happened to her.)

Claimant's Exhibit 1, page 3, reflects that the claimant saw Dr. Leslie on or about January 28, 2001. She reported being hit in the forehead at Pace Industries. She was having some drainage and nose bleeds, according to the claimant. Dr. Leslie noticed that she was tender over the left frontal sinus. On x-ray, there was no trauma

noted to that area. He noted that she was hit in the forehead. Neurologically, it was noted that her cranial nerves were intact. There was no sign of any serous fluid coming from the nose that would be consistent with a skull fracture. Dr. Leslie put the claimant on Cephalexin and Nasonex. He stated that most of the headache was from a sinus infection. He stated that there was no sign of a "closed head trauma." He returned the claimant to work light duty, then to return to normal duty on Monday. Claimant's Exhibit 1, page 5, notes a return to work slip for claimant to return to normal duty on March 5, 2001.

On March 15, 2001, the claimant had a CT scan of the brain, which produced a normal result. In May, 2001, the claimant was referred to a neurologist. By June 13, 2001, the claimant was seeing a neurologist, Dr. Bruce Robbins. She complained of headaches, nausea and vomiting. She told Dr. Robbins she experienced headaches prior to the January 27, 2001, accident. (Cx1, page 11) On June 21, 2001, the claimant had an EEG, which was normal. On March 27, 2001, the claimant had an MRI of the brain and it was normal. (Rx-1, p. 9)

The claimant saw Dr. Vann R. Smith, a neuropsychologist, on January 7, 2002. Dr. Smith's report stated:

"The probability of impaired brain function in this case is significant to a high degree of scientific/medical certainty. These data are compatible with the normal findings noted across the additional neuropsych diagnostic screening tests procedures administered to this patient."

\_\_\_\_\_ (Cx-1, p. 17)

\_\_\_\_\_ Dr. Smith stated that the claimant's profile:

"...is suggestive of and consistent with moderately severe, diffuse organic brain dysfunction such as that associated commonly with traumatic brain insult to which the brain has adapted significantly but not completely. These data are, in my clinical opinion, consistent with the type and severity

\_\_\_\_\_ of the closed head injury reported by the patient in this case.”  
\_\_\_\_\_ (Cx-1, p. 18)

\_\_\_\_\_ Dr. Smith’s final diagnosis was:

“Organic Brain Syndrome Secondary to Closed Head Trauma” and  
“Closed Head Trauma with Grade III Concussion, by History.”  
(Cx-1, p. 18)

\_\_\_\_\_ The claimant saw Dr. Winston T. Wilson, a clinical psychologist, in April, 2002. He performed independent psychological evaluations on the claimant by administering numerous psychological tests on her (“trail A and trail B tests”.) Dr. Wilson stated: “These results show evidence of very mild impairment. The problem may be due to brain damage or depression. Further testing is indicated to address this problem.” His final diagnoses were:

“1. I believe Mrs. Vannocker has a mental disorder. She suffers from Major Depression at present. It may be that this condition is covering up the brain damage that Dr. Smith found. We won’t know until the Depression is lifted.

2. Her on-the-job accident was, in my opinion, the major cause of her current condition. I cannot say what was the sole cause of her problem or any other problem.”  
(Cx-1, p. 23)

\_\_\_\_\_ The claimant saw Charles Nichols, a clinical psychologist, in December, 2002. Among his diagnoses were:

“Major Depressive Disorder, Single Episode, Moderate Cognitive Disorder NOS; Personality Change Due to Head Trauma, Closed Head Trauma (by history).”  
\_\_\_\_\_ (Cx-1, p. 27)

\_\_\_\_\_ The claimant underwent a vocational assessment from Mr. Bob White, a vocational specialist in North Little Rock, Arkansas, on July 27, 2003. His report concluded:

“as she is currently it is doubtful she could return to even unskilled employment. She suffers from impaired attention, concentration, recall and memory loss - all requirements in any job. Further her ability to behave in an emotionally stable manner, relate predictably in social situations and deal with the emotional demands of work (stress) are doubtful.”

(Cx-1, p. 33)

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employee-employer-carrier relationship existed at all relevant times.
2. The claimant’s average weekly wage was \$407.53.
3. The claimant sustained a compensable injury to her forehead on February 27, 2001, which was treated as medical only.
4. The preponderance of the evidence reflects that the claimant did not sustain an organic brain injury on February 27, 2001.
5. The preponderance of the evidence reflects that the claimant did not sustain a mental injury or illness pursuant to A.C.A.11-9-113 (Supp 2003) on February 27, 2001.
6. The preponderance of the evidence reflects that the claimant is not entitled to temporary total disability benefits.
7. The preponderance of the evidence reflects that the claimant is not entitled to permanent disability benefits.
8. The preponderance of the evidence reflects that the claimant is not entitled to reasonably necessary medical benefits subsequent to the last payment of medical benefits by respondent.

9. The preponderance of the evidence reflects that the claimant is entitled to a payment of \$500.00 for her forehead disfigurement pursuant to A.C.A. 11-9-524 (Supp. 2003.)

10. The preponderance of the evidence reflects that the claimant is entitled to an attorney's fee.

### DISCUSSION

#### **1. \_\_\_\_\_ DID CLAIMANT SUSTAIN A COMPENSABLE ORGANIC BRAIN INJURY?**

\_\_\_\_\_ It was stipulated that the claimant sustained a compensable injury to her forehead on February 27, 2001. That injury was treated as medical only, and no further benefits were paid by respondent. The claimant has the burden of proving a compensable injury by medical evidence, supported by objective findings. A.C.A. § 11-9-102(4)(D) (Repl. 2002). "Objective findings" are those findings which cannot come under the voluntary control of the patient.

\_\_\_\_\_ The only findings contained in the record which suggest that the claimant sustained a closed head injury which resulted in the problems that she has experienced is found in the results of the neuro-psychological cognitive tests administered by Dr. Vann Smith. In Watson v. Tayco, Inc., 79 Ark. App. 250, 86 S.W. 3<sup>rd</sup> 18 (2002), the Arkansas Court of Appeals held that neuropsychological testing standing alone is not sufficient evidence of a brain injury. There must be some other objective evidence of such an injury. I do not find any other objective evidence establishing that claimant suffered a closed head injury. The results of the neuropsychological testing standing alone is not enough to establish a compensable injury. Therefore, the preponderance of the evidence reflects that the claimant did not sustain a compensable organic brain

injury. EEG, CT scan and MRI was negative. Since there was no compensable organic brain injury, the claimant is not entitled to benefits which she alleges she is entitled to because of an organic brain injury.

**2. IS CLAIMANT ENTITLED TO BENEFITS PURSUANT TO A.C.A. § 11-9-113 (MENTAL INJURY OR ILLNESS)?**

The claimant does not remember what happened during her accident on February 27, 2001. She related events to her treating physicians that other individuals told her had happened to her. The preponderance of the evidence reflects that the claimant was working on February 27, 2001, and sustained a minor injury to her upper forehead. The credible evidence of record in this case reflects that the claimant was slightly injured and the injury left a small scar on claimant's forehead as reflected in Claimant's Exhibit #2. A.C.A. § 11-9-113 refers to mental injury or illness, which is caused by a physical injury to the employee's body. As stated in the previous discussion, the claimant's cognitive dysfunction is not organically based (no organic brain injury.) If claimant's cognitive dysfunction is compensable pursuant A.C.A. § 11-9-113, the claimant is limited to 26 weeks of benefits pursuant that statute. To prevail pursuant to A.C.A. § 11-9-113, the claimant must show that her mental injury was caused by a physical injury (which was to her forehead, according to all the evidence.) Since there is no proof the claimant sustained physical injury to her brain, the question remains whether the claimant sustained mental injury or illness which was caused by the physical injury to claimant's forehead. A.C.A. § 11-9-113 states: "No mental injury or illness under this section shall be compensable unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders. Both Dr. Winston Wilson and Dr. Charles Nichols, (clinical

psychologist), diagnosed the claimant with major depressive disorder, single episode, moderate (DSM-IV 296.22, p. 370). Dr. Wilson stated that in his opinion, the claimant's on-the-job accident was the major cause of her current condition. Dr. Nichols diagnosed the claimant with major depressive order, single episode, moderate; cognitive disorder and personality change due to head trauma. The record reflects that the claimant certainly had migraine headaches prior to her compensable injury.

The claimant must prove by a preponderance of the evidence that she sustained a compensable mental illness or injury. The preponderance of the evidence must reflect that the mental illness was caused by claimant's physical injury to her forehead. The preponderance of the evidence reflects that the claimant's mental illness was diagnosed by a licensed psychologist and met the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders. The statute also reflects that: "Notwithstanding any other provisions of this chapter, where a claim is by reason of mental illness or injury, the employee shall be limited to twenty-six weeks of disability benefits."

However, by a preponderance of the evidence I do not find that the slight physical injury to the claimant's forehead "caused" any mental injury or illness that the claimant might have. The claimant, according to the medical records, reported to the various doctors and psychologists treating her that she was struck with such force that she was knocked from the platform, unconscious, lying on the floor, her glasses shattered, and blood pouring from a wound on her forehead. She even told Dr. Smith that she was in close proximity to "a tank which exploded in her face." (T-118) She said it knocked her backward to the floor, sustaining a concussion, which was grade 3. The

claimant says she does not have any idea what happened to her. It appears that she never clearly related her lack of memory on the specifics of the incident to any of the doctors that she saw. It appears that claimant related to her treating physicians that the history she was giving to them was something she accurately recalled. Some specific aspects of claimant's history were in complete contradiction to witnesses who were present and recall what occurred. No one who observed the incident or the activities immediately thereafter sufficiently corroborate the stories the claimant told her medical providers. And yet, those providers admit in their reports that they are relying on the history given by the claimant in making their assessments. The claimant admitted at the hearing that witnesses who helped her after her injury or who told her anything about it were not produced at the hearing. (T-7) Those are glaring omissions. Dr. Winston Wilson, the clinical psychologist, stated that the claimant's symptoms were "likely to be exaggerated and not necessarily related to an actual physical condition." (T-125)

I believe the preponderance of the evidence reflects that the claimant was operating a die cast machine that was producing aluminum parts. A "blister" is produced on one of the parts when some gas becomes trapped and doesn't escape out. The gas pops through the thin housing, and in the case of the claimant, the blister blew out and hit her in the forehead. A notation of her injury was written in the "band aid" book (reflecting minor injury.) It was not considered a serious injury. Her supervisors indicated that there was "a little red spot" on her forehead. The claimant, according to the individuals who testified, was never unconscious, nor were her safety glasses shattered or broken in any way. According to one witness, the claimant completed her work shift that night. Dempsy Gibbins testified that the claimant did have a "small spot

of blood on her forehead”, so he instructed her to go to the bathroom and clean it off. She was in the bathroom, according to Mr. Gibbins, for 10 or 15 minutes. Then, she came back and finished her shift. He testified that at no time during this incident was the claimant unconscious, nor was she knocked to the ground. According to Mr. Gibbins, a woman who went with the claimant to the bathroom, Gina Sanchez, was working for Pace Industries on the date of the October 2, 2003, hearing. Gina Sanchez did not testify at the hearing.

The preponderance of the evidence reflects that the claimant was hit in the forehead when a blister, having a maximum thickness of the end of a quarter coin, popped and hit her in the forehead. Difficulties are caused in this case, because A.C.A. § 11-9-113 requires that the physical injury cause mental difficulties. The problem is that according to the claimant’s testimony, she doesn’t remember what happened to her prior to going to see Dr. Leslie. She related to Dr. Leslie things that other people told her had happened to her. As stated earlier in this Opinion, statements made to her about her condition (which she related to the physicians later) were admitted into evidence through claimant’s testimony not to prove the truth of the matters, but to show the reason why she reacted to those statements. None of those witnesses who relayed those things to her regarding exactly what happened to her ever testified. All of these problems considered, the preponderance of the evidence reflects that there was no causal relationship between the physical injury and the mental injury.

Webster’s College Dictionary, 216 (1996), defines “cause” as: “bring about” or “reason”. Black’s Law Dictionary, 220 (Sixth Edition, 1990), has several definitions: “To be the cause or occasion of; to effect as an agent; to bring about; to bring into

existence; something that precedes and brings about an effect or a result; a reason for an action or condition.” (263-264) The claimant cannot prove that this minor forehead injury caused all of this major depression, because she does not remember what happened to her and what she related happen to her came from information from individuals who did not testify at the hearing. The information from these people, who are unknown directly conflict with those individuals who were present at or near the time the accident occurred and did testify at the hearing. They do not substantiate the unknown individuals’ statements to the claimant. Therefore, the preponderance of the evidence is not present to justify the finding that the injury caused any mental illness.

**3. DISFIGUREMENT**

With regard to claimant’s minor forehead injury, the preponderance of the evidence does reflect that the claimant is entitled to compensation for minor disfigurement as reflected in the photograph previously discussed. A.C.A. § 11-9-524 (Repl. 2003) states that the Commission shall award compensation for serious and permanent facial or head disfigurement in the sum not to exceed \$3,500.00. According to all of the testimony, the claimant certainly sustained a forehead injury, which caused slight bleeding and a small scar on her forehead. Therefore, the preponderance of the evidence reflects that the claimant is entitled to the sum of \$500.00 for her slight disfigurement.

**4. TEMPORARY TOTAL DISABILITY:**

With regard to temporary total disability benefits from February 27, 2001, to January 25, 2002, under the findings discussed above the claimant would only be entitled to temporary total disability if she was within a healing period and totally

incapacitated from earning wages due to the slight forehead injury she suffered on February 27, 2001. There is no indication that the claimant was not able to perform work-related duties simply due to the cut on the forehead. Dr. Leslie returned claimant to full duty shortly after the accident to claimant's forehead. It was demonstrated that the claimant filed for unemployment in April, 2001. Therefore, the preponderance of the evidence does not reflect that the claimant is entitled to temporary total disability for her compensable forehead injury.

**5. MEDICAL BENEFITS:**

The compensable injury which was demonstrated by a preponderance of the evidence was the forehead injury. Medical benefits were paid initially by respondents. Claimant sought additional medical treatment on her own for alleged mental and organic brain injuries. The preponderance of the evidence reflects that the claimant's medical treatment subsequent to the payment of initial treatment by respondent was not reasonably necessary pursuant to A.C.A. 11-9-508.

**AWARD**

The claimant is awarded the benefits for disfigurement as previously discussed, along with an attorney's fee for Mr. Frederick Spencer. This award shall bear interest at the legal rate until paid.

**IT IS SO ORDERED.**

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DON N. CURDIE,  
Administrative Law Judge

DC